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Article in *Annual Review of Anthropology* · September 2005

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Looting and the World's Archaeological Heritage: The Inadequate Response

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Annu. Rev. Anthropol.
2005. 34:343–61

The *Annual Review of Anthropology* is online at
anthro.annualreviews.org

doi: 10.1146/
annurev.anthro.34.081804.120551

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0084-6570/05/1021-
0343\$20.00

Key Words

archaeology, antiquities, trade, museums

Abstract

The world's archaeological heritage is under serious threat from illegal and destructive excavations that aim to recover antiquities for sale on the international market. These antiquities are sold without provenance, so that their true nature is hard to discern, and many are ultimately acquired by major museums in Europe and North America. The adoption in 1970 by UNESCO of the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* created a new ethical environment in which museums and their representative associations adopted policies that were designed to guard against the acquisition of "unprovenanced," and therefore most probably looted, antiquities. Unfortunately, over the past decade, U.S. museum associations have been advocating a more relaxed disposition, and the broader archaeological and anthropological communities are in significant measure responsible since they have met this unwelcome development largely in silence.

Contents

INTRODUCTION.....	344
WORLDWIDE LOOTING	
TODAY	345
LEGISLATION AND ITS	
EFFECTIVENESS	347
WHERE DOES THE	
RESPONSIBILITY LIE? THE	
ROLE OF MUSEUMS	348
THE LYDIAN TREASURE	349
THE ETHICAL RESPONSE.....	350
Repositories of Last Resort	351
THE 1970 RULE.....	351
THE IMPORTANCE OF	
ACQUISITIONS POLICIES	353
FROM STEINHARDT TO	
SCHULTZ: MUSEUM	
RECIDIVISM	355
WHERE DOES THE	
RESPONSIBILITY LIE? THE	
ACADEMIC WORLD AND	
THE PUBLIC.....	356

INTRODUCTION

We in the academic community, and in particular archaeologists and other serious students of the human past, are failing in our responsibility to conserve and to persuade others to conserve the world's archaeological heritage. This heritage—that is to say, the material remains of past human activities—is being destroyed at an undiminished pace. Part of that destruction is brought about by natural agencies such as erosion and inundation. Part comes from agricultural activities, which involve the reworking of the earth's surface, or from mineral extraction, and part from urban development including the construction of buildings and of motorways. But distressingly a significant proportion of the ongoing destruction is brought about by looters, acting from commercial motives, who are financed indirectly by private collectors of antiquities. Moreover, these collectors sometimes

find their collecting activities tacitly encouraged and even legitimized by some prominent museums, notably in Europe, in the United States and in Japan. This problem is by no means a new one, but it is one that has grown more acute and also more clear-cut in recent decades. Although some major museums have put in place ethical acquisition policies which prevent their acquiring recently looted artifacts, we argue here that in recent years the academic and museum communities have been insufficiently active, and certainly ineffective, in persuading more museum directors and trustees of their duty not to permit the acquisition by museums of “unprovenanced” artifacts that are, in all probability, looted. Indeed, we detect evidence of retrograde movement on this issue by the major U.S. museum associations. Unless leading museums, who are widely seen as the keepers of the public conscience in this area, can be persuaded to adopt more exacting standards and to end their cozy and acquiescent relationships with private collectors, it is likely that the looting will continue undiminished.

Already in 1970 the matter had become one of such international concern that UNESCO adopted its Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the University of Pennsylvania Museum formulated a pioneering declaration stating that it would acquire “no more art objects or antiquities for the Museum unless the objects are accompanied by a pedigree” (Biddle 1980). In view of these two important statements, the year 1970 has come to be regarded as something of a watershed insofar as “unprovenanced” antiquities are concerned, and academic and museum treatments of such material that were unquestioned in the years before 1970 are now often frowned upon. Moralities have evolved (Renfrew 2000, pp. 77–80). Yet although since then some legislative provisions have been established, both nationally and internationally, to restrict the traffic in “unprovenanced” antiquities, and ethical guidelines have been

made available to guide museum acquisitions, there are still many museums and private collectors who, by their failure to exercise due diligence [for instance by applying the “1970 Rule” (see below)], continue to give indirect support to the looting process. Despite clear calls from many archaeologists, anthropologists, and museum curators and directors—and the clear positions adopted and energetically advocated, for instance by the AIA, the SAA, and ICOM, which will be noted below—most museums continue to lack clear and transparent ethical acquisition policies. Some museums continue to purchase or to accept loans or gifts of artifacts whose origin and history has not been clearly established. And yet they manage to do so without the widespread public condemnation and apparently without the evident concern among their trustees which might be expected, and which may be the only way of putting an end to such trafficking, and of reducing the looting upon which it feeds. Although nearly all museums proclaim that they will not acquire cultural material emerging from Iraq in the aftermath of the war, we predict that, within a few years, some museums will do just that, either claiming ignorance of the origins of the objects, or perhaps even claiming that they are saving the cultural heritage of humankind. Some museums have already acquired material from Afghanistan.

Recently, the focus on the destruction of the archaeological record through looting, and the role of museums in acquiescing to the flow of “unprovenanced” antiquities, has been obscured by the arguments concerning the repatriation of antiquities which were removed long ago, well before the 1970 watershed. This might be described as the “Secondary Elgin Marbles Syndrome,” where in resisting claims for restitution of cultural objects long established in their collections, such museums manage to turn a blind eye to the ongoing looting today and to the need for rigor in ensuring that new acquisitions have not been recently looted. Thus although the *Declaration on the Importance and Value of Universal*

Museums, proclaimed in December 2002 by 18 major museums (Lewis 2004), decries the illegal trade in cultural objects, it makes no clear statement about how it might be abated by due diligence in continuing museum acquisition. It seems ironic that the ethical debate currently focuses on the issue of restitution of antiquities looted decades ago, where the contextual damage and associated loss of information is long since accomplished, whereas it largely ignores the much more urgent issue of ongoing looting and the continuing loss of information about the past.

It is disquieting also that the President of a new organization, the ACCP, Ashton Hawkins, a former legal counsel to the Metropolitan Museum of Art in New York, despite offering general words of support for the 1970 UNESCO Convention, has argued for the relaxation rather than the enforcement of control in the acquisition of “unprovenanced” artifacts by collectors and museums in the U.S. (D’Arcy 2002). The AAMD (2004) *Report of the AAMD Task Force on the Acquisition of Archaeological Materials and Ancient Art* is disturbing too in advocating acquisition guidelines that are less stringent than those adopted by the University of Pennsylvania Museum 34 years earlier.

We first review the scale of the ongoing looting. We then describe the legislative and ethical responses that followed in the train of the 1970 UNESCO Convention. Next we consider where the responsibilities lie for the current crisis. Finally, we conclude that unless the world of scholarship in general gets its act together and works to influence museums and hence collectors, the long-term hopes of learning more about the human past from the archaeological record look bleak indeed.

WORLDWIDE LOOTING TODAY

Information about the commercial trade in archaeological heritage and its deleterious consequences for our understanding of past societies, not to mention the outright theft, vandalism, and destruction of private and

AIA: the
Archaeological
Institute of America

SAA: the Society for
American
Archaeology

ICOM:
International
Council of Museums

ACCP: the
American Council
for Cultural Policy

AAMD: the
Association of Art
Museum Directors

IARC: Illicit Antiquities Research Centre

SAFE: Saving Antiquities for Everyone

SPACH: Society for the Preservation of Afghanistan's Cultural Heritage

public property that it entails, has been gathered in a large number of papers and authored and edited books (see for example Atwood 2004, Brodie et al. 2000, Brodie & Doole 2004, Coggins 1969, Gill & Chippindale 1993, Graepler 1993, Kirkpatrick 1992, Meyer 1973, O'Keefe 1997, Renfrew 2000, Schick 1998, Stead 1998, Toner 2002, Watson 1997; and papers in Brodie et al. 2001, Brodie & Tubb 2002, Heilmeyer & Eule 2004, Leyten 1995, Messenger 1999, Schmidt & McIntosh 1996, Tubb 1995). *Archaeology* magazine has published many well-illustrated articles on the subject, many of which were reprinted in Vitelli (1996). More information is also available in the "Antiquities Market" section of the *Journal of Field Archaeology*, which ran from 1974 to 1993 and has recently been revived, and in *Culture Without Context*, the biannual newsletter of Cambridge University's IARC. Many other papers are available in the literature and some will be mentioned below. Web resources include David Gill and Christopher Chippindale's "Looting Matters!" at Swansea University (<http://www.swan.ac.uk/classics/staff/dg/looting/>), IARC (<http://www.mcdonald.cam.ac.uk/IAARC/home.htm>), SAFE (<http://www.savingantiquities.org/index.htm>), Heritage Watch in Cambodia (<http://www.heritagewatch.org/over.htm>), and SPACH (<http://spach.info/>). Finally, special mention should be made of the work of ICOM (<http://icom.museum/>). ICOM has acted for the international museums' community in developing an ethical disposition towards the antiquities market, and highlighted the associated cultural destruction with their series of "100 Missing Objects" publications, and their "Red Lists."

Some quantitative information about the destruction of archaeological sites and monuments "on the ground" has been provided by archaeological surveys of regions and individual sites. In 1983, one study showed that 58.6% of all Mayan sites in Belize had been damaged by looters (Gutchen 1983). Between

1989 and 1991 a regional survey in Mali discovered 830 archaeological sites, but 45% had already been damaged, 17% badly. In 1996 a sample of 80 were revisited and the incidence of looting had increased by 20% (Bedaux & Rowlands 2001, p. 872). A survey in a district of northern Pakistan showed that nearly half the Buddhist shrines, stupas and monasteries had been badly damaged or destroyed by illegal excavations (Ali & Coningham 1998). In Andalusia, Spain, 14% of known archaeological sites have been damaged by illicit excavation (Fernandez Cacho & Sanjuán 2000). Between 1940 and 1968, it is estimated that something like 100,000 holes were dug into the Peruvian site of Batan Grande, and that in 1965 the looting of a single tomb produced something like 40 kg of gold jewelry, which accounts for about 90% of the Peruvian gold now found in collections around the world (Alva 2001, p. 91).

The continuing destruction of Iraq's archaeological heritage is particularly well-documented. Between the end of the Gulf War in 1991 and 1994, 11 regional museums were broken into and approximately 3000 artifacts and 484 manuscripts were stolen, of which only 54 have been recovered (Symposium 1994). Assyrian palaces in north Iraq were also targeted. Pieces of at least 14 relief slabs from Sennacherib's palace at Nineveh were discovered on the market, and bas-reliefs from the palaces of Ashurnasirpal II and Tiglathpileser III were stolen from the storeroom at Nimrud (Russell 1997). Then, following the outbreak of the most recent hostilities, in April 2003, the National Museum in Baghdad (along with several libraries) was ransacked. The official U.S. investigation reported that at least 13,515 objects had been stolen from the museum (Bogdanos 2003), of which by June 2004 something like 4000 had been recovered. Since then, archaeological looting has become endemic throughout south Iraq. Surveys were carried out by the National Geographic in May 2003 (Wright et al. 2003) and UNESCO in June 2003, which discovered that many sites had been

badly damaged. It was estimated, for example, that 30–50% of Isin had been destroyed by illicit digging (UNESCO 2003, 8). The destruction in Iraq has been paralleled in Afghanistan, and for much the same reasons (Ferozi & Tarzi 2004). Despite the Taliban's high profile demolition of the Bamiyan Buddhas for "religious" purposes, most of the destruction in Afghanistan has been wrought by the search for saleable antiquities and manuscripts, and has continued if not actually worsened since the Taliban's removal from power.

Some information about the material scale of the illegal trade is forthcoming from official police statistics. In Turkey for example, between 1993 and 1995 there were over 17,500 official police investigations into stolen antiquities (Kaye 1995). Greek police reported that between 1987 and 2001 they recovered 23,007 artifacts (Doole 2001, p. 19). From 1969 to 1999 the Italian Carabinieri seized 326,000 artifacts from illegal excavations, of which nearly 100,000 were recovered between 1994 and 1999 (Pastore 2001, p. 159). In one year, 1997, German police in Munich recovered 50–60 crates containing 139 icons, 61 frescoes, and 4 mosaics that had been torn from the walls of north Cypriot churches; Swiss police seized something like 10,000 antiquities from four warehouses in Geneva Freeport that belonged to an Italian antiquities dealer (Watson 1998, p. 11); and Italian police arrested a dealer who was found to be in illegal possession of between 10,000–30,000 antiquities (Doole 1999, p. 11). And in global terms, 1997 was not an unusually bad year.

Although the statistics quoted above have established beyond doubt that archaeological sites and monuments are being deliberately stripped of artifacts and sculpture, companion studies of exhibition and sales catalogues have shown that upwards of 70% of archaeological objects that come onto the market or that are contained in recently assembled collections are without any indication of provenance (Chippindale & Gill 2000, Elia 2001, Gilgan 2001, Nørskov 2002). The clear implication

is that they have only recently entered circulation and are probably stolen, looted, or fake.

Auction houses and dealers object to the automatic equation that archaeologists are prone to make between "unprovenanced" and looted antiquities, and point out that provenances are often not revealed because of a vendor's request for confidentiality, or because of the commercial requirement to keep a source secret. Nevertheless, although there is some truth to these claims, it is hardly likely that commercial or personal reasons can account for all the missing provenances that have been recorded by the aforementioned studies.

LEGISLATION AND ITS EFFECTIVENESS

Many nations have legislation which protects their own cultural heritage, sometimes determining that all ancient cultural objects discovered within their boundaries belong to the state, and making it an offense to export antiquities without a government-approved permit. Other nations, such as the United Kingdom or the United States, do not protect their indigenous antiquities in such a sweeping way, although they do have some legislative protection. The recent convictions of Tokely-Parry in the United Kingdom and Schultz in the United States, which we discuss below, have confirmed that it is a criminal offense under those countries' respective stolen property laws to trade in antiquities that are known to be stolen public property. But very few nations currently have specific legislation which effectively protects the antiquities of other countries, and which makes it an offense to import antiquities that have been illegally excavated within, or illegally exported from, their country of origin. Such might well be the implied responsibility underlying the 1970 UNESCO Convention, but its ratification by a nation does not in itself introduce a new legal framework.

The United States' CCPIA of 1983 offered a very constructive response to the problem.

CCPIA:
Convention on
Cultural Property
Implementation Act

It implements the 1970 UNESCO Convention with respect to the United States by establishing the possibility of bilateral agreements with individual states to restrict the importation into the United States of specified classes of archaeological and ethnographic artifacts from those states. There are currently agreements with Cyprus, Italy, Bolivia, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Mali and Cambodia.

After its very late accession in 2002 to the 1970 UNESCO Convention, the United Kingdom did in 2003 take the significant step of enacting the Dealing in Cultural Objects (Offences) Act. This now makes it a criminal offense knowingly to deal in tainted cultural objects. An antiquity or other cultural object is defined as "tainted" if it has been illegally excavated or removed from an archaeological site anywhere in the world after the Act came into force. This for the first time makes it a specific offense under British law to deal (knowingly) in illicit antiquities of overseas origin.

In Europe more generally there have been encouraging moves by other laggard countries, like the United Kingdom, to ratify the 1970 UNESCO Convention. In view of its role as a market place, the ratification by Switzerland is of considerable significance. Denmark and Sweden have also now ratified, and it is believed that Germany, Belgium, Holland, and perhaps Norway are in the process of ratification. That certainly represents progress, although without supplementary legislation in each country (as exemplified by Switzerland's passage of the Federal Act on the International Transfer of Cultural Property in 2003), the move is of more symbolic than practical consequence.

The recent conflicts in Afghanistan, Iraq, and the former Yugoslavia have taken a heavy toll on archaeological and other cultural heritage, and have drawn attention back toward the protection that might be offered during wartime by the Hague Convention, and particularly its 1954 First Protocol and 1999 Second Protocol. Unfortunately, at the present

time, neither the United States nor the United Kingdom has ratified this convention, although in May 2004 the United Kingdom Government announced its intention to do so.

There are two further international conventions that offer protection to movable cultural heritage, although as neither has been ratified by the United States or Britain, we shall mention them only in passing. The first is the 1995 UNIDROIT *Convention on Stolen and Illegally Exported Cultural Objects*, which rectifies a perceived weakness of the 1970 UNESCO Convention by harmonizing the different stolen property laws of civil code and common law countries. The 2001 UNESCO *Convention on the Protection of the Underwater Cultural Heritage* extends protection to cultural heritage on the international seabed.

WHERE DOES THE RESPONSIBILITY LIE? THE ROLE OF MUSEUMS

We have consistently sought to argue that although the acts of looting take place in remote places, and often in developing countries, the responsibility for those acts lies, at least in part, elsewhere. The incentive for the looting derives from the market, from the circumstance that the looted objects can be sold for significant profit. It has, however, been well documented (Brodie 1998) that it is not the looters themselves who reap the full financial benefit of their activities. The price of the objects in question increase as they move up the chain: from regional dealers to metropolitan dealers in the country of origin, to dealers trading clandestinely in international centers, to dealers and auction houses trading openly when the objects have changed hands sufficiently often that their illicit origin can no longer be firmly documented. It is there that the public international price is established. And it is there that the high sale value is determined which is such a powerful incentive to ongoing looting back at the beginning of the chain.

Dealers, private collectors and the majority of museums are in general willing to proclaim that they will never purchase antiquities or other cultural property knowing the material in question to have been stolen [though in practice this principle may be ignored, as the case of the Lydian Treasure (see below) revealingly illustrates]. But it is all too easy for a collector or curator to state that he or she did not realize that an “unprovenanced” object was in fact looted, and very difficult actually to establish the contrary. It is the continuing indiscriminate acquisition of “unprovenanced” antiquities by private collectors and by museums that lies at the root of the looting problem. As museums are often the recipient of private collections, by gift, bequest, or purchase, it is there that the ultimate responsibility lies.

From the standpoint of the archaeologist or anthropologist, it is not simply the artifacts themselves that are important, but the information which their study and publication can offer when taken into consideration along with the detailed circumstances of their discovery. By rewarding the looters through the acquisition of “unprovenanced” material, museums are directly subscribing to the ongoing process of clandestine excavation and hence to the destruction of the contextual information which is the central component of the world’s archaeological heritage. By allowing the acquisition of such material, museum directors and trustees are betraying the principle that archaeological heritage should not be destroyed, and, as Gerstenblith (2003a) has recently suggested, they are also failing in their duty to the institutions they serve.

THE LYDIAN TREASURE

The case of the Lydian Treasure is a revealing one because it is a rare instance of a national government (that of Turkey) actually going to a court of law in a foreign country (the United States) in order to recover possession of a major collection of antiquities (the

so-called “Lydian Treasure”) which had been covertly acquired by one of the world’s great museums (the Metropolitan Museum of Art). The Metropolitan steadfastly refused to return it, although the discovery process in the court proceedings revealed that the museum did indeed have knowledge of the real provenance of the entire looted hoard.

The story of the Lydian Treasure is well known (Kaye & Main 1995), but is worth citing here because it is of pivotal relevance to our theme and because it has apparently not yet led to any public decision by the Trustees of the Metropolitan Museum of Art to formulate and announce an ethical policy on acquisitions comparable to that adopted by the University of Pennsylvania Museum in 1978 (Biddle 1980), or to incorporate the 1970 Rule (see below) into such a policy.

The facts seem clear. In the mid-1960s tumuli in the Uşak region of western Turkey were broken into and looted by villagers. Some of the finds, including more than 360 objects of silver and gold from the sixth century BC, were acquired between 1966 and 1970 by the Metropolitan Museum. The Museum’s own documents, which it was forced to disclose in the court case in 1987, revealed that its curators did in fact know where the finds had come from, although they were not put on permanent display until 1984 under the deliberately misleading caption of the “East Greek Treasure.” The Republic of Turkey took action in the New York court in 1987, whereupon the Museum tried to have the case dismissed under the statute of limitations. The motion to dismiss was denied by the court on the grounds that the Museum should have exercised due diligence at the time of acquisition. This then allowed the parties to the case to undertake the pretrial discovery process, and thus to request and then examine the documents maintained in the files of the other party. As Kaye and Main (1995, p. 153) recount,

[T]he documents produced by the Metropolitan included minutes of meetings

AAM: the American Association of Museums

of the acquisitions committee of its Board of Trustees at which the purchases of the objects were approved, and purchase recommendation forms submitted by the Department of Greek and Roman Art to the acquisitions committee describing the artifacts.

When this evidence was revealed, the Museum settled the case out of court, and the artifacts in question were returned to Turkey.

The Lydian Treasure case is particularly significant in showing that in some cases the allegedly “unprovenanced” antiquities can indeed come with sufficient information that their place of discovery, and therefore the destructive and illegal nature of their “excavation,” is actually known to the purchaser, although of course never acknowledged. To the committed archaeologist, that appears as the extreme of corruption—that a museum official should purchase “unprovenanced” antiquities while actually having to hand information documenting the circumstances of their looting. We find it a troubling question why the museum officials concerned, including the Director, who knowingly acquired such looted material, were not dismissed when their conduct was brought to light, and why the Board of Trustees of the day, if they were aware at the time of the circumstances of the acquisition, did not resign in shame at so manifest a dereliction of their public duty when their complicity, if such it had been, was revealed in the New York court.

THE ETHICAL RESPONSE

The 1970 UNESCO Convention prompted museums and their representative associations to examine their ethical obligations, particularly as regards the acquisition of cultural objects, and since then codes of practice have been developed that ensure a correct ethical disposition. The critical feature of these codes, as they relate to the antiquities market at least, is that every museum should formulate a written acquisitions policy. For example,

article 2.1 of the ICOM *Code of Ethics for Museums* (2004), the professional body to which most of the world’s major museums belong, clearly states: “2.1 *Collections Policy*. The governing body for each museum should adopt and publish a written collections policy that addresses the acquisition, care and use of collections.”

The AAM 1993 Code of Ethics is less specific, but asks that each member museum should prepare its own institutional code, elaborating certain practices, which would, we presume, include an acquisitions policy. This recommendation was necessary. When the J. Paul Getty Museum began developing its own acquisitions policy in 1986, it found that “such a policy did not really exist in any one of the major collecting institutions in America” (True 1997, p. 139). Unfortunately, we have seen nothing to persuade us that the situation has significantly improved since then, despite the advice of ICOM and the AAM.

The problem in practice is that potential acquisitions, even if recently looted, rarely carry with them evidence of that looting. This inevitably implies that any artifact lacking a well-documented provenance may well be the product of illicit excavation and of illegal export from its country of origin. At first sight the appropriate response would be to avoid acquiring any antiquity whatever whose provenance could not be fully documented. That is indeed implied by Article 2.3 of the ICOM *Code of Ethics for Museums*:

2.3. *Provenance and Due Diligence*. Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest or exchange has not been illegally obtained in or exported from, its country of origin or any intermediate country in which it might have been owned legally (including the museum’s own country). Due diligence in this regard should establish the full history of the item from discovery or production.

But the ICOM Code of Ethics goes beyond ensuring the legitimacy of a potential acquisition. It recognizes the damage that looting causes to archaeological heritage when it asks that:

2.4. *Objects and Specimens from Unauthorised or Unscientific Fieldwork.* Museums should not acquire objects where there is reasonable cause to believe their recovery involved the unauthorised, unscientific, or intentional destruction or damage of monuments, archaeological or geological sites . . .

The AAM's equivalent stipulation is weaker:

[the museum ensures that] Acquisition, disposal and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in such materials.

This requirement is open to a broad range of implementations, which makes it necessary for member museums to codify their own policies in this area, as the AAM recommends. Not all museums have done so.

Repositories of Last Resort

For a national or a regional museum there is one other important exception which needs to be specified. For when antiquities which have been excavated illicitly and in contravention of the law within the country in question come to light, it is clear that they must be curated somewhere, in what has come to be called a "repository of last resort." This point is well made in Paragraph 2.11 of the ICOM *Code of Ethics for Museums*:

2.11. *Repositories of Last Resort.* Nothing in this *Code of Ethics* should prevent a museum from acting as an authorised repository for unprovenanced, illicitly collected or recov-

ered specimens and objects from the territory over which it has lawful responsibility.

The central point here is that the artifacts in question should originate from the territory in which the museum is located and which it serves: there is nothing here which sanctions the acquisition of unprovenanced antiquities originating from outside the museum's own regional or national territory.

THE 1970 RULE

In 1971 the Harvard University Art Museums formulated an acquisitions policy that introduced the idea of a date threshold. As regards a possible acquisition, the policy states that "...the Curator should have reasonable assurance under the circumstances that the object was not exported after July 1, 1971, in violation of the laws of the country of origin and/or the country where it was legally owned" (AIA 2000, p. 129 n.42).

Harvard's introduction of the 1971 date threshold was significant. It recognized that, in practice, nearly every museum in the world is willing to acquire antiquities which were unearthed long ago, for instance in the nineteenth century, however dubious the circumstances of their discovery at the time. It is generally accepted that objects from old collections of antiquities are freely traded and acquired and that to refrain from acquiring them now would do nothing to diminish the flow of more recently looted material.

Then, in 1973, the AIA joined with the AAM, the U.S. Committee of ICOM, the CAA, the AAMD, and the AAA to adopt a resolution asking that museums should refuse to acquire through purchase, gift, or bequest any object exported in violation of the laws of a country of origin, and urging adherence to principles contained within the UNESCO Convention (AIA 2000, pp. 106–7, 122). The AIA at first imposed a date threshold of December 30, 1973, the date of the resolution, but subsequently changed it to December 30, 1970, the

CAA: the College Art Association of America

AAA: the American Anthropological Association

date of an earlier resolution. Article 2 of the current AIA Code of Ethics reads,

[Members should r]efuse to participate in the trade of undocumented antiquities and refrain from activities that enhance the commercial value of such objects. Undocumented antiquities are those which are not documented as belonging to a public or private collection before December 30, 1970...or which have not been excavated and exported from the country of origin in accordance with the laws of that country.

The inclusion in an acquisition code of the strict (because enforceable) requirement that they will not in principle acquire antiquities which lack a clear and documented history back to 1970 denies museums the opportunity of acquiring antiquities which have been illicitly excavated after that date, and prevents them acquiring antiquities that are the product of recent looting, but does not stop them from acquiring antiquities that were in circulation before that date. This "1970 Rule" seems an effective and practical response to an ethical problem, and one that is capable of rigorous enforcement. It was adopted by the British Museum in 1998 in its statement on the acquisition of antiquities, and is now enshrined within its Policy on Acquisitions (as revised in March 2004), where paragraph 4.2.5 states,

Wherever possible the Trustees will only acquire those objects that have documentation to show that they were exported from their country of origin before 1970 and this policy will apply to all objects of major importance.

This is a crucial provision in practice because it sets out a rule that can be enforced strictly (although the British Museum's policy explicitly excludes minor antiquities from this strict provision, without explaining how the archaeological significance of an unprovenanced piece can realistically be assessed).

Thus the 1970 Rule is an important one because it establishes a standard which is quite

possible for a museum to follow in practice, and which can be strictly applied. In Britain the Museums Association has now adopted the 1970 Rule as a general policy, and it is applied also by the National Art Collections Fund, which helps to fund museum acquisitions, as one of its standard criteria for support. It should be understood that the Rule is only a pragmatic guideline, in that it offers protection but does not guarantee immunity against legal action by a dispossessed owner. Nevertheless, we regard it as a key principle precisely because it is one which is enforceable, and which therefore does lead museums with an ethical acquisitions code to decline to buy, or even to receive by gift or bequest, any material which is or may be tainted. It also prevents museums from accepting gifts of such material from private collectors, and therefore prevents private collectors from obtaining tax relief or other marks of recognition for donations or bequests of such tainted materials. It therefore has the status of a benchmark, and one that is likely to be contested vigorously in the future.

There are signs that such contestation is already taking place, and signs too of slippage. There have been suggestions that a more suitable date threshold would be 1983, the date of U.S. ratification of the UNESCO Convention. The J. Paul Getty Museum has announced that it will not acquire material that had not been documented prior to 1995 (True 1997, p. 139). The recently established ACCP claims to support the principles underlying the 1970 UNESCO Convention, but does not openly endorse the 1970 Rule, or any other date threshold. Worse still, in 2004, the AAMD suggested that although museums should not acquire any object from an official archaeological excavation and known to have been removed illegally from its country of origin after 1970, it would be permissible for them to acquire an unprovenanced object of unknown origin (i.e., most probably a looted object) provided that it can be documented to have been outside its country of origin for at least ten years (AAMD 2004, p. 4).

This rolling “ten year rule,” whereby museums would be able to acquire antiquities which have a documented history extending back not to 1970 but simply to a date ten years before the time in question (i.e., currently back to 1995), in our view amounts effectively to a looters’ charter. It would be necessary only for looted antiquities clandestinely to enter a private collection, to be documented, and then to wait there for ten years until the time limit on any possible claim for restitution has expired, in order to be available for acquisition by a museum.

Even when museums have announced their adherence to a date threshold, there have been accusations of backsliding. In 1995 Harvard’s Arthur M. Sackler Museum bought 182 Greek vase fragments of uncertain provenance, despite its strong acquisitions policy of 1971 (Robinson & Yemma 1998). Why has the academic community at Harvard not taken steps to ensure that the Harvard Art Museums adhere to their policy? In 1998, the *Boston Globe* revealed that although the Boston Museum of Fine Art had adopted an acquisitions policy in 1983, it had nevertheless between 1984 and 1987 purchased 73 classical Greek and Roman antiquities, of which only ten had any clear provenance (Robinson 1998a).

THE IMPORTANCE OF ACQUISITIONS POLICIES

It must—one hopes—be unusual for curators or trustees actually to have before them documentary evidence indicative of looting at the time of purchase of the apparently “unprovenanced” antiquities. That is a special feature which gives particular and deserved notoriety to the Lydian Treasure case.

More often, when the acquisition of unprovenanced antiquities is contemplated, there is simply no direct evidence of the specific find circumstances of the objects in question, which have been deprived of all context by the long sequence of transactions in the “antiquity transfer chain” mentioned above. Indeed it is one of the functions of such an an-

tiquity transfer chain that specific knowledge of the circumstances of discovery should indeed be securely lost. For if they were not lost, good title could be contested (as in the case concerning the Lydian Treasure) and restitution might be demanded. The deliberate loss of information is an integral and deliberate part of the illicit market in “unprovenanced” antiquities.

Many other cases can be cited of important groups of material, or of significant individual pieces, where archaeological materials whose looted status can be securely asserted or at least plausibly suspected have come to public attention. Prominent amongst them in recent years would be the Sevso Silver (Renfrew 2000, pp. 46–51), the Kanakariá Mosaics (Gerstenblith 1995), the Aidonia Treasure (Howland 1997), the Steinhart phiale (see below), the Lydian Treasure, the Boston Herakles (Rose & Acar 1995), the Getty kouros (notable as probably a fake antiquity: Kokkou 1993), the Cleveland Apollo (Litt 2004), and the Euphronios vase (Meyer 1973, pp. 86–100). Such a list can easily be compiled even before one goes on to look at some of the private collections which have been publicly exhibited and which contain many “unprovenanced” antiquities of which a number are probably the product of recent looting. Prominent among these are the collections of George Ortiz (Ortiz 1996), Leon Levy and Shelby White (von Bothmer 1990), the Alsdorfs (Pal 1997), and the Fleischmans, now in the J. Paul Getty Museum (True & Hamma 1994). The museums which have exhibited these dubious materials bear a heavy responsibility, for exhibition in a prominent museum in effect launders a tainted antiquity, by implication establishing, or at least going some way to establish, both its authenticity and its respectability.

Recently, attention has been drawn to the practice of some collectors and some museums of arranging that recently purchased and hitherto unknown and unpublished antiquities—whose status as looted must always be suspected, even if it can rarely be

definitively proved—should first be publicly exhibited in a well-known museum, alongside the museum's own well-established collection (Renfrew 2004). The collector gains in this way because when he or she goes on to exhibit this hitherto entirely unrecorded and “unprovenanced” piece in a display of the personal collection, its entire lack of recorded history can be covered by citing its display in the museum in question, often with reference to publication in the museum's catalogue of its exhibition. So the collector profits from this laundering process, in that the newly-acquired “unprovenanced” antiquity gains respectability and acceptance through its display in a well-known collection. The museum's benefits are less immediately obvious, for with a skeptical and well-informed viewing public, its lack of an ethical acquisition and display policy would be openly exposed. But with the present culture of acceptance, museums often avoid censure, although the Boston Museum of Fine Arts (Robinson 1998a), the J. Paul Getty Museum (Kaufman 1996), the Louvre (Henley 2000), and the Metropolitan Museum have been publicly criticized for their dubious and very questionable ethical positions.

But in some cases the benefits to the museum appear to them very real. Collectors show their gratitude to the museum for exhibiting, and in effect laundering, their collection of “unprovenanced” antiquities in a number of ways. First, they often donate some or all of the antiquities (not infrequently the most obviously looted ones) to the museums, thereby often obtaining substantial tax benefits from the tax authorities by virtue of their “charitable” donation. (The specialist curators of the museums should not supply valuations in such cases, but former director of the Metropolitan Museum, Thomas Hoving (1996, pp. 287–88), records that during the 1970s and 1980s the now fired curator of the J. Paul Getty Museum, Jiri Frel, was responsible for collectors receiving benefits in excess of what they had themselves paid to acquire the object in question). Second, the collectors

who have benefited from this laundering process sometimes pay substantial sums towards new museum galleries, which are in some cases named in their honor. And third, the collector in question is sometimes rewarded by being made a trustee of the museum in question, a position which is sometimes held to confer a significant honorific status. That there may be an inherent conflict of interest is rarely suggested, and the cozy collusion between collector and curator generally overlooked.

It might seem invidious to put all the blame for this situation on the shoulders of museum curators and directors, but they should, as trained professionals, see the requirements of a decent ethical position more clearly than the private collector. It is these professionals who give the lead, and all too many of them have not yet recognized that the morality of the nineteenth century with its policy of unrestricted acquisitions has long since been superseded. But it is this failure to realize that times have changed, and that coherent ethical codes for acquisition are now needed, that makes so distasteful the appearance on the 2002 *Declaration on the Importance and Value of Universal Museums* of the signatures of the directors of institutions, including the Art Institute of Chicago, the Cleveland Museum of Art, the Louvre Museum, the Metropolitan Museum of Art, and the Museum of Fine Arts, Boston. Each of these has been publicly criticized (see the sources cited above) for the failure to exercise due diligence and apply a proper ethical code in relation to dubious acquisitions. Indeed we wonder whether the three museums on the list of signatories which do collect antiquities (unlike some which focus exclusively on paintings or contemporary art) and which do indeed have publicly stated acquisition policies, namely the State Museums, Berlin (Eule 2004), the British Museum, and, though not adhering to the 1970 Rule, the J. Paul Getty Museum, are wise to associate themselves in polemical declarations in such ethically questionable company. The 2002 *Declaration* has

been criticized in a number of quarters for its stand on restitution (Lewis 2004, O'Neill 2004). But despite the apparent consensus on the issue of restitution, the museum world actually stands divided on the much more urgent theme of current acquisition—urgent because this is crucial to the issue of the ongoing looting. Our argument here is that some of these self-appointed “universal museums” which we have mentioned are condoning and even indirectly promoting the continuing looting of the heritage. This reduces what might otherwise have been coherent arguments in their *Declaration* to little more than pretentious sophistry.

FROM STEINHARDT TO SCHULTZ: MUSEUM RECIDIVISM

The disquieting current position of U.S. museums as regards illegally excavated and/or exported archaeological material can be gauged from a brief of *amici curiae* (“friends of the court”) submitted in support of the New York collector Michael Steinhardt’s defense of his ownership of an ancient gold phiale (Lyons 2002, Shapreau 2000). The gold phiale (bowl) in question dates to the third century B.C. and was discovered in Sicily sometime during the late 1970s. It “surfaced” in 1980 when it was acquired by the Sicilian antiquities dealer Vincenzo Cammarata. In 1991 Cammarata traded the phiale to the then Swiss-based dealer William Veres, who arranged for its sale to Steinhardt through the mediation of another dealer, Robert Haber. Steinhardt is a generous benefactor of the Metropolitan Museum, and the phiale was authenticated by the Metropolitan’s conservation laboratory before Steinhardt took possession of it in 1992. Then, in 1995, acting on a complaint submitted by the Italian government that the phiale had been illegally exported from Italy, U.S. Customs agents seized the phiale, and Steinhardt was forced to establish ownership in a New York District Court. The Court ruled against Steinhardt, for two

reasons: first, that archaeological heritage in Italy is state property and that therefore archaeological objects that are removed from Italy without authorization constitute stolen property under the U.S. NSPA; second, that the import of the phiale into the United States had been facilitated by false statements on customs forms. Its place of origin was there given as Switzerland instead of Italy, and its value was given as \$250,000, when in fact Steinhardt had paid \$1 million.

Steinhardt appealed against the District Court’s decision, at which point the U.S. museums’ community intervened. In 1998 the AAM submitted a brief of *amici curiae* in support of Steinhardt in its own right, and acting also on behalf of the AAMD, the ASMD, and the AASLH, which represents history museums. A counter brief was submitted by the AIA, on behalf of the AAA, the United States Committee for the International Council on Monuments and Sites, the SAA, the American Philological Association, and the Society for Historical Archaeology. The AAM’s brief distanced itself from the issue of false customs declarations, stating that museums “would not condone any improper conduct, including the making of false statements on Customs forms” (AAM 2000, p. 77). The main thrust of the brief was that foreign patrimony statutes (national laws vesting ownership of unknown and undiscovered archaeological heritage in the state) should not be recognized in U.S. courts of law. The issue of patrimony laws had been a vexed one since a court decision in the 1970s (Gerstenblith 2002, p. 27), and the AAM’s brief argued that patrimony laws are counter to both U.S. law (which allows private ownership of archaeological heritage originating on land that is not federal property) and U.S. public policy (as they place a restriction on the free trade of cultural objects).

The remarkable thing about the 2000 brief is that it constituted a complete reversal of the AAM’s previous policy. In 1985 the AAM had opposed an ultimately failed amendment to the NSPA, which had proposed that publicly-owned antiquities should be excluded from

NSPA: National Stolen Property Act

ASMD: the Association of Science Museum Directors

AASLH: the American Association for State and Local History

NADAOPA:

National Association
of Dealers in
Ancient, Oriental
and Primitive Art

the category of stolen property. The amendment would, the AAM at that time argued, “encourage the depredation of archaeological sites and the illegal export of cultural material from its country of origin” (AAM 1985, p. 156).

It is a further surprising feature of the 2000 AAM brief that, although it condemns the looting of archaeological sites (AAM 2000, pp. 80, 99 n.6), nowhere does it address what should be the central and contentious fact of the Steinhardt case—that the phiale in question is, in all probability, a looted object. Yet by defending the right of a private citizen to purchase and own such an object, the AAM, together with the AAMD, the ASMD, and the AASLH, has, in effect, condoned the looting process, despite protestations to the contrary. We consider that their position implies a scandalous disregard for the archaeological heritage and the need for its conservation. But the further issue we wish in particular to consider here is that what would appear to be the entire U.S. museum community, without any clear exception or protest, and notwithstanding the campaigning tradition of some museums in actively opposing the illegal trade, threw its support behind Steinhardt in his fight over the phiale.

In the event, in 1999 the Second Circuit Court of Appeal ruled against Steinhardt, although it sidestepped the thorny problem of the applicability of the Italian patrimony law when it decided that the false customs declarations constituted in themselves sufficient grounds for the phiale’s forfeiture. But the issue of foreign patrimony laws did not go away with the phiale. It was back in contention two years later at the trial of Frederick Schultz.

In 2001, Schultz, a Manhattan antiquities dealer and former president of the NADAOPA, was charged with conspiring to receive, possess, and sell antiquities stolen from archaeological sites in Egypt (Gerstenblith 2002, 2003b). Schultz had obtained at least eight antiquities from the British antiquities restorer Jonathan Tokely-Parry, who in 1997 had himself been

tried and convicted in a British court of handling stolen Egyptian antiquities, and sentenced to six years’ imprisonment. Schultz had also provided advance funding for some of Tokely-Parry’s operations.

Schultz’s trial hinged upon the applicability of the Egyptian patrimony law, passed in 1983, and in February 2002 Schultz was judged guilty as charged, and sentenced to a 33-month imprisonment. He appealed but in June 2003 the Second Circuit Court of Appeals upheld his conviction. The Schultz decision reaffirmed the precedent set by the 1970s decision that U.S. courts can enforce foreign patrimony laws. This decision is the one that had been feared by the museums in the Steinhardt case, but there is no sign yet that U.S. museums are “besieged by civil replevin claims from foreign governments” as predicted by the AAM’s Steinhardt brief (AAM 2000, p. 97). It is true that U.S. museums will in future have to be more careful about acquiring “unprovenanced” antiquities on the market, but that is no bad thing.

WHERE DOES THE RESPONSIBILITY LIE? THE ACADEMIC WORLD AND THE PUBLIC

Although the major U.S. museum organizations are clearly not exercising an adequate leadership role, it is likely that they would take a lead from the public, if the wider public subscribed to and supported a well-defined ethical policy. And here the focus of attention must turn to the educationalists. Well-informed specialist voices, especially in the United States, have indeed drawn attention to these issues for many years. Clemency Coggins (1969) was one of the first to develop the theme, which has been strenuously developed over the years since by such writers as Hester Davis, Karen Vitelli, Patty Gerstenblith, Ricardo Elia, and others to whose work we have referred here. In Europe, until recently we have looked to Christopher Chippindale,

David Gill, and Daniel Graepler. Since 1978 the AIA has maintained the policy that the editors of the *American Journal of Archaeology* would not publish articles or reports based on artifacts acquired in contravention of the 1970 UNESCO Convention (Ridgway & Wheeler 1978) and the SAA has adopted a similar position.

Yet somehow the voice of professional archaeology, effectively and authoritatively expressed in this way, has not yet prevailed. This must in large part be the consequence of the failure of the professional archaeologists and the ethically-based museums, such as the University of Pennsylvania Museum, to persuade museum directors and trustees in the United States that there is a significant problem here which can only be addressed by codified acquisition policies that follow the 1970 Rule, as advocated by the AIA. It seems extraordinary that in 1998 representatives of the AAMD met privately with Frederick Schultz in his capacity as President of NADAOPA (Robinson 1998b), at a time when he was already under investigation by the FBI, to discuss support for the position of Michael Steinhardt in the matter of the gold phiale.

Something is wrong somewhere. How is it that the professional view has not prevailed? How is it that a group of art museum directors, supported by a number of wealthy collectors, can work against the evident long-term interest of the world's archaeological heritage in this way? And why is not the entire academic community in the United States expressing shock and horror that a group of museum directors can claim to be representing all U.S. museums in filing their *amici curiae* brief in the Steinhardt case? How is it that the Schultz conviction does not make them feel that something is wrong somewhere when the recent President of NADAOPA, from whose members the museums which they direct have been purchasing antiquities for many years, is jailed for an offense relating to "unprovenanced" (in fact, stolen and falsely provenanced) antiquities?

Part of the problem is the reluctance of the academic community to become engaged in the debate. As long ago as 1979, while she was editor of the *Journal of Field Archaeology*'s "The Antiquities Market," Karen Vitelli was forced to ask "What have you done about the antiquities market today?" (Vitelli 1979, pp. 75-77). She was dismayed by the volume of complaints she was receiving about the antiquities trade, all asking her to "do something." Vitelli answered that she was not the head of a large organization, able to mobilize resources at will, nor was it her personal vocation or crusade. Doubtless, Ellen Herscher and Timothy Kaiser, Vitelli's successors at "The Antiquities Market," suffered in similar fashion. We know from our own experience at the IARC that far too many archaeologists think they have discharged their responsibilities in that direction by complaining to us or advising us of what they see to be an appropriate course of action. But, like Vitelli, there is a physical limit to what we alone can achieve.

In retrospect, the years 2002-2004 will come to be seen as years of ethical crisis for our treatment of the world's archaeological heritage, but nobody yet seems to have noticed. In 2002 the ACCP was formed, with a Council composed of museum-associated lawyers and curators, and a Board of Advisors consisting of wealthy private collectors and directors of large museums. Two years later, in 2004, the AAMD published the report of its Task Force enquiry into the acquisition of archaeological materials and ancient art, which contains the revisionist guidelines referred to above (AAMD 2004). Perhaps some members of the Task Force were also members of the ACCP's Board of Advisors? Unfortunately, like so many things in the antiquities trade, we have not been told, although it would be in the public interest to know. One thing is clear though: the new AAMD guidelines, which are in complete contradiction of the ICOM Code of Ethics, and which therefore threaten to isolate U.S. museums from their larger international community, will no doubt receive the powerful and influential backing of the ACCP.

Unless action is taken now to oppose this combined initiative, there is a danger that many museums will feel able to lapse back into what Thomas Hoving would call a “second age of piracy.”

The only new and constructive responses to this crisis that we can see developing are SAFE and the Lawyers’ Committee for Cultural Heritage Preservation, and these organizations were the initiatives of concerned media professionals and of lawyers, respectively, not academic or professional archaeologists. Nevertheless, SAFE is attracting the support of the archaeological and ethical museums communities, and we hope that the academic

world in the United States will give coherent and sustained support to SAFE, as well as to the AIA and to the other professional associations, and to their officials who, already 25 years ago, were clearly defining the issues.

When we submitted an early draft of this article to the *Annual Review of Anthropology*, one editorial response was: “Don’t preach to the choir.” The problem is that although the choir has been in tune for a long time now, some of the congregation do not yet seem to be singing from the same hymn sheet. Perhaps it is time that they are persuaded to take more interest in these matters, and brought into effective harmony.

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Contents

Frontispiece	
<i>Sally Falk Moore</i>	xvi
Prefatory Chapter	
Comparisons: Possible and Impossible	
<i>Sally Falk Moore</i>	1
Archaeology	
Archaeology, Ecological History, and Conservation	
<i>Frances M. Hayashida</i>	43
Archaeology of the Body	
<i>Rosemary A. Joyce</i>	139
Looting and the World's Archaeological Heritage: The Inadequate Response	
<i>Neil Brodie and Colin Renfrew</i>	343
Through Wary Eyes: Indigenous Perspectives on Archaeology	
<i>Joe Watkins</i>	429
The Archaeology of Black Americans in Recent Times	
<i>Mark P. Leone, Cheryl Janifer LaRoche, and Jennifer J. Babiarz</i>	575
Biological Anthropology	
Early Modern Humans	
<i>Erik Trinkaus</i>	207
Metabolic Adaptation in Indigenous Siberian Populations	
<i>William R. Leonard, J. Josh Snodgrass, and Mark V. Sorensen</i>	451
The Ecologies of Human Immune Function	
<i>Thomas W. McDade</i>	495

Linguistics and Communicative Practices

New Directions in Pidgin and Creole Studies <i>Marlyse Baptista</i>	33
Pierre Bourdieu and the Practices of Language <i>William F. Hanks</i>	67
Areal Linguistics and Mainland Southeast Asia <i>N. J. Enfield</i>	181
Communicability, Racial Discourse, and Disease <i>Charles L. Briggs</i>	269
Will Indigenous Languages Survive? <i>Michael Walsh</i>	293
Linguistic, Cultural, and Biological Diversity <i>Luisa Maffi</i>	599

International Anthropology and Regional Studies

Caste and Politics: Identity Over System <i>Dipankar Gupta</i>	409
Indigenous Movements in Australia <i>Francesca Merlan</i>	473
Indigenous Movements in Latin America, 1992–2004: Controversies, Ironies, New Directions <i>Jean E. Jackson and Kay B. Warren</i>	549

Sociocultural Anthropology

The Cultural Politics of Body Size <i>Helen Gremillion</i>	13
Too Much for Too Few: Problems of Indigenous Land Rights in Latin America <i>Anthony Stocks</i>	85
Intellectuals and Nationalism: Anthropological Engagements <i>Dominic Boyer and Claudio Lomnitz</i>	105
The Effect of Market Economies on the Well-Being of Indigenous Peoples and on Their Use of Renewable Natural Resources <i>Ricardo Godoy, Victoria Reyes-García, Elizabeth Byron, William R. Leonard, and Vincent Vadez</i>	121

An Excess of Description: Ethnography, Race, and Visual Technologies <i>Deborah Poole</i>	159
Race and Ethnicity in Public Health Research: Models to Explain Health Disparities <i>William W. Dressler, Kathryn S. Oths, and Clarence C. Gravlee</i>	231
Recent Ethnographic Research on North American Indigenous Peoples <i>Pauline Turner Strong</i>	253
The Anthropology of the Beginnings and Ends of Life <i>Sharon R. Kaufman and Lynn M. Morgan</i>	317
Immigrant Racialization and the New Savage Slot: Race, Migration, and Immigration in the New Europe <i>Paul A. Silverstein</i>	363
Autochthony: Local or Global? New Modes in the Struggle over Citizenship and Belonging in Africa and Europe <i>Bambi Ceuppens and Peter Geschiere</i>	385
Caste and Politics: Identity Over System <i>Dipankar Gupta</i>	409
The Evolution of Human Physical Attractiveness <i>Steven W. Gangestad and Glenn J. Scheyd</i>	523
Mapping Indigenous Lands <i>Mac Chapin, Zachary Lamb, and Bill Threlkeld</i>	619
Human Rights, Biomedical Science, and Infectious Diseases Among South American Indigenous Groups <i>A. Magdalena Hurtado, Carol A. Lambourne, Paul James, Kim Hill, Karen Cheman, and Keely Baca</i>	639
Interrogating Racism: Toward an Antiracist Anthropology <i>Leith Mullings</i>	667
Enhancement Technologies and the Body <i>Linda F. Hogle</i>	695
Social and Cultural Policies Toward Indigenous Peoples: Perspectives from Latin America <i>Guillermo de la Peña</i>	717
Surfacing the Body Interior <i>Janelle S. Taylor</i>	741

Theme 1: Race and Racism

Race and Ethnicity in Public Health Research: Models to Explain Health Disparities <i>William W. Dressler, Kathryn S. Oths, and Clarence C. Gravlee</i>	231
Communicability, Racial Discourse, and Disease <i>Charles L. Briggs</i>	269
Immigrant Racialization and the New Savage Slot: Race, Migration, and Immigration in the New Europe <i>Paul A. Silverstein</i>	363
The Archaeology of Black Americans in Recent Times <i>Mark P. Leone, Cheryl Janifer LaRoche, and Jennifer J. Babiarz</i>	575
Interrogating Racism: Toward an Antiracist Anthropology <i>Leith Mullings</i>	667

Theme 2: Indigenous Peoples

The Effect of Market Economies on the Well-Being of Indigenous Peoples and on Their Use of Renewable Natural Resources <i>Ricardo Godoy, Victoria Reyes-García, Elizabeth Byron, William R. Leonard, and Vincent Vadez</i>	121
Recent Ethnographic Research on North American Indigenous Peoples <i>Pauline Turner Strong</i>	253
Will Indigenous Languages Survive? <i>Michael Walsh</i>	293
Autochthony: Local or Global? New Modes in the Struggle over Citizenship and Belonging in Africa and Europe <i>Bambi Ceuppens and Peter Geschiere</i>	385
Through Wary Eyes: Indigenous Perspectives on Archaeology <i>Joe Watkins</i>	429
Metabolic Adaptation in Indigenous Siberian Populations <i>William R. Leonard, J. Josh Snodgrass, and Mark V. Sorensen</i>	451
Indigenous Movements in Australia <i>Francesca Merlan</i>	473
Indigenous Movements in Latin America, 1992–2004: Controversies, Ironies, New Directions <i>Jean E. Jackson and Kay B. Warren</i>	549

Linguistic, Cultural, and Biological Diversity
Luisa Maffi 599

Human Rights, Biomedical Science, and Infectious Diseases Among
South American Indigenous Groups
*A. Magdalena Hurtado, Carol A. Lambourne, Paul James, Kim Hill,
Karen Cheman, and Keely Baca* 639

Social and Cultural Policies Toward Indigenous Peoples: Perspectives
from Latin America
Guillermo de la Peña 717

Indexes

Subject Index 757

Cumulative Index of Contributing Authors, Volumes 26–34 771

Cumulative Index of Chapter Titles, Volumes 26–34 774

Errata

An online log of corrections to *Annual Review of Anthropology* chapters
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Annu. Rev. Anthropol. 2005.34:343-361. Downloaded from www.annualreviews.org
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